

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
VALDOSTA DIVISION**

**DR. LANA FOSTER,**

**Plaintiff,**

**v.**

**ECHOLS COUNTY SCHOOL  
DISTRICT,**

**Defendant.**

**CASE NO: 7:22-CV-140 (WLS)**

**ORDER**

Presently before the Court is Plaintiff Dr. Lana Foster’s Dismissal Without Prejudice (Doc. 11) (“Notice”) filed April 13, 2023, and docketed as a Notice of Voluntary Dismissal. Therein, Plaintiff cites Rule 41(a)(1)(A)(i)<sup>1</sup> of the Federal Rules of Civil Procedure to dismiss without prejudice as to all claims in the above-captioned action. (*Id.*) The Court notes that Rule 41(a)(1)(B) provides for dismissal without prejudice unless the notice states otherwise.

Defendant has a pending Motion to Dismiss (Doc. 9) with prejudice. *See West v. Am. Fresh Foods, L.P.*, No. 7:10-cv-91(HL), 2011 WL 63563, at \*1 (M.D. Ga. Jan. 4, 2011) (listing circuit courts holding that defendant’s filing of a motion to dismiss does not preclude plaintiff from voluntarily dismissing the case, unless such motion to dismiss may be converted to a motion for summary judgment under Fed. R. Civ. P. 12(b)(6)). Defendant did not respond to the Notice. Nor did Defendant assert that its Motion to Dismiss should be converted to a motion for summary judgment.

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<sup>1</sup> (a) Voluntary Dismissal.

(1) By the Plaintiff.

(A). . . [T]he Plaintiff may dismiss an action without a court order by filing:

(i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment[.]

Fed. R. Civ. P. 41(a)(1)(A)(i).

For the purpose of completing the record, the Court acknowledges and **CONFIRMS** Plaintiff's Notice. The above-captioned action is **DISMISSED**, without prejudice. Plaintiff shall pay her own costs and fees associated with this dismissal and shall recover nothing of Defendant.

The Court further finds that Plaintiff's voluntary dismissal renders Defendant's pending Motion to Dismiss (Doc. 9) moot. Accordingly, the Motion to Dismiss (Doc. 9) is **DENIED**, without prejudice as **MOOT**.

**SO ORDERED**, this 4th day of May 2023.

/s/ W. Louis Sands

**W. LOUIS SANDS, SR. JUDGE**  
**UNITED STATES DISTRICT COURT**